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8 Attorneys for Plaintiff EDGAR LOPEZ, an individual, on
9 behalf of himself and others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

EDGAR LOPEZ, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

v.

ANDREW CHEKENE ENTERPRISES, INC.
DBA A.C. ENTERPRISE, a California
Corporation; ANDREW CHEKENE, as an
individual, and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-23-603955

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

*[Filed concurrently with Notice of Motion
and Motion; Declaration of Jose Garay;
Declaration of Edgar Lopez; Declaration of
Jodey Lawrence; and [Proposed] Order]*

Date: March 5, 2025

Time: 9:00 a.m.

Dept.: 301

Trial Date: None Set

Complaint Filed: January 12, 2023

FAC Filed: April 12, 2023

SAC Filed: October 27, 2023

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff EDGAR LOPEZ (“Plaintiff”), on behalf of himself and all other similarly situated
3 employees of Defendant ANDREW CHEKENE ENTERPRISES, INC. (“Defendant”) (with Plaintiff,
4 “the Parties”), respectfully requests preliminary approval of the Parties’ Class and PAGA Action
5 Settlement Agreement and Release (“Settlement” or “Settlement Agreement”) pursuant to California
6 Code of Civil Procedure Section 382 and California Rules of Court, Rule 3.769 of the California Rule
7 of Court.

8 **I. INTRODUCTION**

9 Plaintiff was employed by Defendant along with other Class members as hourly, non-exempt
10 construction employees performing various construction related work tasks at the contracted job sites
11 of Defendant’s customers. Plaintiff filed his Class Action Complaint on January 12, 2023, and filed
12 his Amended Complaint, adding a claim under the Private Attorney General Act (“PAGA”), on April
13 12, 2023. (Declaration of Jose Garay In Support of Motion for Preliminary Approval (“Garay Decl.”),
14 ¶ 6). On October 27, 2023, Plaintiff filed the operative Second Amended Complaint, alleging the
15 following claims: (1) failure to pay all wages including minimum and overtime wages; (2) failure to
16 provide meal periods; (3) failure to provide rest breaks; (4) failure to reimburse for all necessary
17 business expenses; (5) failure to provide accurate wage statements; (6) waiting time penalties; (7)
18 violations of California’s Business and Professions Code sections 17200 et seq., and (8) civil penalties
19 under PAGA. (*Id.*).

20 Plaintiff’s claims overlapped with those alleged in a recently settled class and PAGA action in
21 Alameda County Superior Court, *Rodas v. Andrew Chekene Enterprises, Inc.*, Case No. RG20057424
22 (“*Rodas*”), which significantly narrowed the limitations period. The *Rodas* case covered the claims
23 asserted in this Action for the period March 5, 2016, through February 10, 2022. Based on the *Rodas*
24 settlement, the recovery in this Action begins on February 11, 2022, rather than the four years prior to
25 the filing of the original complaint.

26 The Parties participated in a class-wide mediation with mediator Mark LeHocky on June 13,
27 2024. In preparation for mediation, the Defendant agreed to exchange information, including relevant
28 data points related to the putative class, a 25% random sampling of class member time and pay data,

1 and relevant employment policies and procedures. After a full day of negotiation with the assistance
2 of the mediator, and after follow-up settlement discussions, the Parties executed a Memorandum of
3 Understanding, which was later memorialized in the Settlement now before the Court for approval.
4 (Garay Decl., ¶ 9).

5 Without opposition from Defendant, Plaintiff requests that the Court grant preliminary
6 approval of the Parties' Settlement Agreement at Exhibit A to the Declaration of Class Counsel
7 ("Garay Decl."), and the Notice of Settlement at Exhibit 1 to the Settlement. The Settlement Class
8 will consist of all individuals who are or previously were employed by Defendant as non-exempt,
9 hourly employees within the State of California from February 11, 2022, through the date that the
10 court grants preliminary approval of the settlement. (Garay Decl., ¶ 4). Defendant's records
11 established there were 561 Settlement Class members from February 11, 2022, through June 13, 2024
12 (the date of mediation). (*Id.*, ¶ 21).

13 The agreed upon "Gross Fund Value" is \$270,000.00, inclusive of all fees and costs. (Garay
14 Decl., ¶ 24). All estimated Settlement Class Members will automatically receive a settlement share
15 unless they opt out and will divide, on a *pro-rata* basis, a Net Fund Value of approximately
16 \$125,000.00 if all allocations are approved. The estimated average gross individual settlement
17 payment to the Class members, using a straight average, is \$222.82. (*Id.*, ¶ 26). The Gross Fund
18 Value of \$270,000.00 is 14% of the total maximum liability exposure Plaintiff estimated Defendant
19 could face on the class-wide claims. (*Id.*, ¶ 68).

20 The proposed Settlement is fair, reasonable, and adequate, and in the best interest of the Class.
21 Plaintiff, with the consent of Defendant, respectfully requests that this Court issue an Order in the
22 form provided herewith: (1) preliminary approving the proposed class-wide settlement of this action;
23 (2) approving the form and method for providing class-wide notice; (3) directing that notice of the
24 proposed settlement be given to the class; (4) appointing Plaintiff Edgar Lopez as Class Representative
25 for settlement purposes only; (5) appointing Jose Garay of Jose Garay, APLC, as Class Counsel for
26 settlement purposes only; and (6) scheduling a hearing date for Final Approval of the Settlement and
27 Plaintiff's application for attorneys' fees and costs.
28

II. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION

A. Plaintiff's Claims and Defendant's Denials

Plaintiff's operative complaint asserts that Defendant failed to pay Plaintiff and Class Members for all hours worked, including the correct minimum wage, overtime, and double overtime rate when Plaintiff and Class members were paid a piece-rate. Plaintiff alleges that Defendant rounded, edited, and or input the incorrect times for Plaintiff and Class Members' start times to reflect the scheduled start time instead of the actual start time which should have included time spent arriving early to work, commuting to work sites, and performing other preliminary duties and postliminary duties, and otherwise preparing for the workday. As such, Plaintiff alleges that he and the Class Members performed work off-the-clock without compensation.

Plaintiff further alleges that Plaintiff and Class Members were not paid at least minimum wages when they were paid on a piece rate basis and not compensated for non-productive time and time spent during rest breaks. In addition, Plaintiff alleges that when Defendant switched from a piece rate to hourly pay system, Defendant failed to compensate Plaintiff and Class Members for all hours worked for work performed off-the-clock and for reporting time pay, and overtime pay.

Plaintiff further alleges that Defendant failed to provide all required meal periods, including second meal periods when Plaintiff and Class Members worked in excess of 10 hours per workday, and failed to provide them with premium pay for every non-compliant meal period. Specifically, Plaintiff alleges that Defendant provided a single one-hour-and-a-half (1.5) hour break that aggregated two 15-minute rest periods and one one-hour meal period. Similarly, Plaintiff alleges that he and the Class Members were not permitted to take compliant rest breaks and were not paid an additional hour of pay at their regular rate of pay when they were not permitted to take a compliant rest period.

Plaintiff further alleges that Plaintiff and Class Members who were separated from employment did not receive payment of all wages owed to them upon separation of employment due to Defendant's alleged failure to pay all wages and meal and rest period premiums to Plaintiff and Class Members during their employment. Furthermore, Plaintiff alleges that he and the Class Members were not furnished with complete and accurate wage statements that showed the gross and

1 net wages earned, total hours worked, the applicable rates in effect during the pay period, and the
2 corresponding number of hours worked at each hourly rate. Lastly, Plaintiff further alleges that
3 Defendant failed to reimburse Plaintiff and Class Members for necessary business expenses, including
4 the costs of purchasing equipment such as benches, impact drills, and lasers.

5 Defendant denies all of Plaintiff's Class and PAGA claims, and contends, among other things,
6 that it has complied at all times with all applicable laws and asserted that the Settlement Class
7 Members were properly compensated for all time worked, and otherwise treated at all times in
8 compliance with all applicable laws. (Garay Decl., ¶¶ 2 and 16, Exhibit A at ¶¶ 43 and 61).

9 Defendant contends it maintained legally compliant policies and has properly, timely and fully
10 paid all earned wages, that it did not require employees to work without pay, nor did Defendant have
11 knowledge of any purported work performed off-the-clock, and that it has paid all required overtime
12 and provided meal and rest breaks. Defendant further argued that it authorized and permitted timely
13 meal and rest breaks, and that, to the extent an individual employee did not take a provided break,
14 employees waived their right to them and to seek relief herein. Defendant also asserted it issued
15 accurate wage statements to employees, and neither Plaintiff nor any of the putative class members
16 are entitled to penalties for alleged inaccurate wage statements. (Garay Decl., ¶ 17.)

17 Defendant also emphasized that it recently revised and corrected any and all non-compliant
18 wage and hour policies and practices in connection with the recently settled *Rodas* matter, and to the
19 extent that any remained, they were unique to Plaintiff's individual circumstances and were not subject
20 to common proof across all class members. (*Id.*)

21 After extensive investigation and informal discovery, including analysis of relevant documents
22 and other gathered data and after relying upon and completing an assessment of Defendant's potential
23 liability exposure, Class Counsel believed that this case was appropriate for resolution. Given the high
24 level of risk present for both sides, and the substantial uncertainty and expense of protracted litigation,
25 the parties elected to mediate Plaintiff's claims and explore settlement, which they achieved and now
26 ask the Court to preliminarily approve. (*Id.*, ¶ 18)

27 **B. Investigation and Discovery**

28 Before filing, Class Counsel investigated and researched the circumstances and facts

1 underlying the pertinent issues and the law applicable thereto. This required thorough discussions and
2 interviews between Class Counsel and Plaintiff, in addition to research into the various legal issues
3 involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the
4 facts and claims giving rise to the action, including: (1) conducting informal discovery, and meeting
5 and conferring with defense counsel about same; (2) reviewing and analyzing a 25% sample of class
6 member time and pay records as well as employment policies and procedure related to the wage and
7 hour claims at issue in the complaint, Plaintiff's personnel file, and other documentation; (3)
8 researching the applicable law and potential defenses; (4) constructing damage models based on
9 interpretations of California law; and (5) reviewing other relevant information provided by Defendant
10 in advance of the mediation. (Garay Decl., ¶ 19).

11 Upon agreeing to schedule mediation, and leading up to their agreement, the parties conducted
12 informal discovery and exchanged details regarding the claims and defenses and the items Plaintiff
13 believed were required to file a motion for class certification and complete a constructive and
14 meaningful mediation. (*Id.*, ¶ 20). Plaintiff provided a comprehensive listing of data and items
15 required to which Defendant responded, including by producing all relevant policy related documents.
16 (*Id.*). Plaintiff's counsel and Defendant's counsel also exchanged class member data and statistics,
17 including the total numbers of Class members, terminated employees, work weeks, pay periods, etc.,
18 and Plaintiff's counsel reviewed the documents and data and provided summaries and
19 recommendations to the mediator and defense counsel. (*Id.*). After conducting the initial
20 investigation, Class Counsel determined Plaintiff's claims were suited for class action adjudication
21 based on what they believed was common course of conduct affecting a similarly situated group of
22 employees. (*Id.*).

23 **C. Mediation and Settlement Efforts**

24 On June 13, 2024, the Parties completed their mediation with mediator Mark LeHocky. (Garay
25 Decl., ¶ 22). Mr. LeHocky is a respected mediator in wage and hour class actions. The mediation
26 took place only after the parties exchanged extensive informal information, documents, and data. (*Id.*).
27 During the mediation, the parties discussed all aspects of the case, including the risks of litigation and
28 the risks to both parties of proceeding with a motion for class certification as well as the law relating

1 to meal periods and rest breaks, off the clock work, and overtime. (*Id.*). After a full day of negotiation
2 with the assistance of the mediator, the Parties agreed to settlement terms which were later
3 memorialized in a memorandum of understanding after further meet and confer efforts to reach
4 agreement on material terms. (*Id.*). The Parties later drafted a long-form Settlement Agreement which
5 is now before the Court for preliminary approval.

6 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and
7 delays posed by further litigation, and Class Counsel's own prior litigation experience, Counsel
8 believes that the recovery for each Class Member is fair and reasonable taking into consideration the
9 amounts received in other wage and hour class actions, the risks inherent in litigation of this genre,
10 and the reasonable tailoring of each Class Member's claim to the settlement award he or she will
11 receive. (*Id.*, ¶ 23). Based on the settlement negotiations, which were extensive and conducted in
12 good faith and at arm's length between attorneys with substantial experience litigating wage and hour
13 cases, the Settlement was the product of a non-collusive settlement process and compromises in the
14 interest of reaching a full and complete settlement. (*Id.*).

15 **III. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE**

16 Defendant has agreed to pay a Gross Fund Value of \$270,000.00 on a non-reversionary basis
17 to settle and release all claims asserted by Plaintiff and the Class. The Settlement Agreement defines
18 the "Class Members" or "Class" as "all individuals who are or previously were employed by
19 Defendant as non-exempt, hourly employees within the State of California during the Class Period,"
20 and the Class Period is February 11, 2022, through the date that the court grants preliminary approval
21 of the class action settlement. The "Settlement Class" or "Settlement Class Members" are all Class
22 Members who have not opted out of the Class by submitting a timely Request for Exclusion.
23 Defendant's records established 561 Settlement Class members from February 11, 2022, through June
24 13, 2024 (the date of mediation). (Garay Decl., ¶ 21).

25 The "Net Fund Value" is the Gross Fund Value, less Court-approved Settlement
26 Administration Costs (up to \$15,000.00), Class Counsel Award (up to one-third of the Gross Fund
27 Value for attorney fees, \$90,000.00, and actual reasonable litigation costs up to \$20,000), the Class
28 Representative Enhancement and Service Award (\$10,000), the 75% portion of the PAGA penalties

1 payable to the LWDA (i.e. \$7,500.00), and the 25% portion of the PAGA penalties payable to the
2 PAGA Employees (i.e. \$2,500). Each Class Member who does not opt out will be entitled to a share
3 of the Net Fund Value, which will be a fixed proportional amount of the Net Fund Value per
4 workweek. (Garay Decl., ¶ 25).

5 If the Court approves all requested allocations and awards above, the Net Fund Value is
6 estimated to be \$125,000.00. (Garay Decl., ¶ 26). For the approximately 561 estimated Settlement
7 Class Members (through mediation), the average gross individual settlement payment, using a straight
8 average, is \$222.82. (*Id.*). Any amounts not approved by the Court as a Class Representative
9 Enhancement and Service Award, or Class Counsel Award, or Settlement Administration Costs, or for
10 the PAGA claim will be added back to the Net Fund Value to be distributed to the Settlement Class
11 Members. (*Id.*).

12 For each Settlement Class Member's "Individual Settlement Payment," the Settlement
13 Administrator will calculate the total Compensable Workweeks for all Settlement Class Members.
14 The respective Compensable Workweeks for each Settlement Class Member will be divided by the
15 total Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for
16 each Settlement Class Member. (Garay Decl., ¶ 28). Each Settlement Class Member's Payment Ratio
17 is then multiplied by the Net Fund Value to determine his or her Individual Settlement Payment.
18 Workweeks will include only those weeks an employee was actively employed as a non-exempt
19 employee during the Class Period. (Garay Decl., ¶¶ 2 and 28, Ex. A, ¶ 55).

20 Each Individual Settlement Payment will be allocated 1/3 as wages, 1/3 as interest, and 1/3 as
21 penalties. The Settlement Administrator will issue an IRS Form W-2 to each Class Member for 1/3
22 of each Individual Settlement Payment, and an IRS Form 1099 for 2/3 of each Individual Settlement
23 Payment. (Garay Decl., ¶ 29). The "Effective Date" of the Settlement will be the date when both of
24 the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of
25 the Settlement; and (b) the Judgment is final and no longer appealable. (*Id.*).

26 Checks issued to Settlement Class Members pursuant to the Settlement Agreement will remain
27 negotiable for One Hundred Eighty (180) days. Any settlement checks that are not claimed or
28 negotiated within 180 calendar days after the distribution of Individual Settlement Payments to

1 Settlement Class Members shall be void and the funds not disbursed as a result, and will instead be
2 paid to the State Controller's Office of Unclaimed Property Fund to be held in the name of the Class
3 Member and in accordance with the procedures set forth in California Code of Civil Procedure section
4 1520. (*Id.*, ¶ 30).

5 Upon approval and as of the Effective Date, all Class Members will release Defendant and the
6 "Released Parties" from the "Released Claims by Settlement Class Members, which are defined as
7 "all mean all causes of action and factual or legal theories arising during the Class Period that were or
8 could have been alleged in the Complaint (or LWDA notice) or arise from facts alleged in the
9 Complaint (or LWDA notice), including all damages, penalties, interest and other amounts recoverable
10 under said claims, causes of action or legal theories of relief, including but not limited to claims for
11 failure to pay wages including minimum and overtime wages, failure to provide meal periods, failure
12 to provide rest periods, failure to reimburse business expenses, failure to provide accurate itemized
13 wage statements, failure to pay waiting time penalties, unfair business practices, civil penalties under
14 PAGA, Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.2, 226.3, 226.7, 226.8, 510, 512,
15 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2698 et seq., Business and
16 Professions Code section 17200 et seq., and the applicable Wage Order." (Garay Decl., ¶ 2, Ex. A at
17 ¶ 29).

18 The Parties also allocate Ten Thousand Dollars (\$10,000.00) from the Gross Fund Value
19 toward PAGA penalties under the Labor Code Private Attorneys General Act of 2004, with 75% of
20 this amount to be paid directly to the LWDA (\$7,500.00), and 25% of this amount (\$2,500.00)
21 ("PAGA Payment") to be paid to PAGA Employees who were employed during the PAGA Period.
22 "PAGA Employees" refers to Class Members who worked for Defendant in a non-exempt position at
23 any time during the PAGA Period, which is defined as February 11, 2022 through the date of
24 preliminary approval. The Settlement Administrator will calculate the PAGA Payments by (a)
25 dividing the amount of the PAGA Employee's 25% share of the PAGA Payment by the total number
26 of pay periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result
27 by each PAGA Employee's number of pay periods worked during the PAGA Period. (Garay Decl.,
28 Ex. A at ¶ 55). PAGA employees may not opt out of the PAGA settlement even if they opt out of the

1 class settlement. (*Id.*)

2 Additionally, as of the Effective Date, all PAGA Employees will release Defendant and the
3 “Released Parties” from the “Released PAGA Claims by PAGA Employees,” which is defined as “any
4 liability for civil penalties recoverable under PAGA for violations during the PAGA Period under
5 PAGA based on any factual or legal theories that were alleged in the LWDA notice or arise from facts
6 alleged in the LWDA notice, including but not limited to the following California Labor Code sections:
7 201, 202, 203, 204, 206, 210, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2,
8 1197, 1197.1, 1198, and 2802.” (Garay Decl., Ex. A at ¶ 30). The Settlement and Notice provide
9 further details on the release, along with the release specific to Plaintiff.

10 The parties have selected Phoenix Settlement Administrators the Settlement Claims
11 Administrator. (Garay Decl., ¶ 27.) Based on a quote from October 2024, the Settlement Agreement
12 budgets up to \$15,000.00 for its services. (*Id.*) Notice of the Settlement will be provided by the
13 Administrator to the Settlement Class in the form of the Class Notice attached to the Settlement as
14 Exhibit 1. The Class Notice includes a summary of the case and settlement terms and provides Class
15 Members with instructions on how to exclude themselves, dispute their workweeks, and object to the
16 settlement, and addresses the deadlines and procedures for doing so.

17 **IV. THE THREE-STEP APPROVAL PROCESS**

18 California Rule of Court 3.769 requires court approval of the settlement of class action
19 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure
20 for settlements of class actions. *See* Manual for Complex Litigation, Second § 30.44 (1993); *Dunk v.*
21 *Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. The second approval step is dissemination of
22 notice of settlement to all Class Members. *Id.* The third step is a final settlement approval hearing, at
23 which evidence and argument concerning the fairness, adequacy and reasonableness of the settlement
24 may be presented and Class Members may be heard. *Id.*

25 The determinations of whether a settlement should be preliminarily approved requires “basic
26 information about the nature and magnitude of the claims in question and the basis for concluding that
27 the consideration being paid for the release of those claims represents a reasonable compromise.”
28 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). However, the record need not

1 contain an explicit statement of the maximum theoretical amount that the class could recover. *See*
2 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010) (“Kullar
3 does not, ... require any such explicit statement of value; it requires a record which allows “an
4 understanding of the amount that is in controversy and the realistic range of outcomes of the
5 litigation.”). Nonetheless, Class Counsel performed a potential liability exposure analysis in advance
6 of mediation, which the parties addressed in detail with the mediator. (Garay Decl., ¶ 18). “If the
7 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no
8 obvious deficiencies, does not improperly grant preferential treatment to class representatives or
9 segments of the class, and falls within the range of possible approval, then the court should direct that
10 notice be given to the class members of a formal fairness hearing, at which evidence may be presented
11 in support of and in opposition to the settlement.” *Manual for Complex Litigation*, Second § 30.44,
12 at 229.

13 In deciding whether to approve class action settlement under California Code of Civil
14 Procedure Section 382 and the California Rules of Court, the Court must find that a proposed
15 settlement is “fair, adequate, and reasonable” and falls within the “range of approval.” *Dunk*, 48 Cal.
16 App. 4th at 1801-02. The trial court considers all relevant factors, such as “the strength of plaintiffs’
17 case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining
18 class action status through trial, the amount offered in settlement, the extent of discovery completed
19 and the stage of the proceedings, the experience and views of counsel, the presence of a governmental
20 participant, and the reaction of the class members to the proposed settlement.” *Id.* The instant
21 settlement satisfies all of these requirements.

22 **V. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

23 The Court’s decision to preliminary approve a settlement is granted great deference, as an
24 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235
25 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to the Class.
26 It is fair, reasonable, and adequate, and should be preliminary approved.

27 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations**

28 The proposed settlement was reached as a result of arm’s length negotiations after the

1 completion of substantial discovery and the exchange of necessary class data. (Garay Decl., ¶ 76).
2 The negotiations have been, at all times, adversarial and non-collusive in nature. While Plaintiff
3 believes in the merits of the case, he and counsel also recognized the inherent risks of litigation and
4 understood the benefit of the Settlement Class receiving funds immediately, as opposed to risking an
5 unfavorable decision on class certification, or then at trial and appeal, that would take several more
6 years to litigate. Assistance from a well-respected mediator ensured negotiations were non-collusive
7 and well-informed. (Garay Decl., ¶ 23).

8 **B. The Parties Engaged in Discovery and Investigation**

9 As discussed above, the parties engaged in substantial informal discovery before the Settlement
10 was reached to allow them to fully evaluate the class claims and Defendant's defenses. This litigation
11 has reached the stage where the parties have a clear view of the strengths and weaknesses of their cases
12 sufficient to support the settlement.

13 **C. Class Counsel are Experienced Class Action and Employment Attorneys**

14 Experienced counsel, operating at arm's length, have weighted the strengths of the case and
15 examined all the issues and risks of litigation and endorse the proposed settlement. Class Counsel are
16 experienced in class actions, have represented their clients zealously, and have no conflict of interests.
17 (Garay Decl., ¶ 94). Class Counsel submits the Settlement is fair, adequate and reasonable in view of
18 the risks and other considerations addressed, and is well-suited for final approval completion of the
19 administration process.

20 **D. The Presence of Governmental Participant**

21 Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with
22 the filing of this motion pursuant to Labor Code section 2699(1)(2).

23 **E. The Strength of Plaintiff's Case and the Risks and Cost of Further Litigation**

24 As with all litigation, there was risk that Plaintiff would not prevail on the merits of his class
25 claims. Class counsel has addressed the strengths of each of the main class claims, Defendant's
26 arguments against liability, and the estimated potential liability exposure Defendant faced on each.
27 For example, Plaintiff contends he and the other class members were not properly provided meal and
28 rest periods. Defendant contended that it provided duty-free meal and rest breaks, and Class Members

1 stopped work and took breaks at the same time every day due to the nature of the job working at
2 construction sites. Class Members also completed daily attestations confirming that they were able to
3 take their breaks. Defendant argued that any variation of these policies and practices would require
4 individual inquiries that would overwhelm the court, rendering certification impossible. Finally,
5 Defendant's time data demonstrated an exceptionally high meal period compliance rate.

6 Plaintiff also alleged he was not paid for all hours worked, including overtime pay, due to
7 Defendant's policy and practice of requiring off the clock work and miscalculating and/or failing to
8 pay overtime. Defendant again argued these claims were not suitable for class treatment, they did not
9 require off the clock work, and they did not miscalculate or improperly pay overtime or the regular
10 rate, and paid for all hours worked. Defendant emphasized that Class Members worked on construction
11 sites where working hours were strictly scheduled by Defendant's customers making it unlikely that
12 Class Members were performing work before or after their shift. Class Members also personally
13 recorded their time and were paid based on the exact time recorded. The need for individualized
14 inquiries would have made certification difficult, and if Defendant prevailed, there would have been
15 no recovery.

16 There was also risks in proving liability for failure to provide accurate wage statements under
17 Labor Code section 226 and failure to pay all wages due at termination under Labor Code 203. These
18 derivative claims require that the underlying claims be proven first, and there are conflicting
19 interpretations as to whether alleged meal and rest claims can even provide the predicate violations
20 for inaccurate wage statement and waiting time penalties claims.

21 Defendant also disputed liability for the underlying wage and meal and rest claims, and
22 penalties under Labor Code section 203 are available only if "an employer willfully fails to pay . . .
23 any wages of an employee who is discharged or quits . . ." With these penalties, there is always the
24 risk that the trier of fact will not find Defendant's actions willful. There was also risk associated with
25 the PAGA claim given the Court's discretion to award a lesser amount. See Labor Code section
26 2699(e)(2). Plaintiff's counsel addressed these risks. This settlement, like most others, was the
27 product of compromise and a realistic assessment of all perspectives.

28 While Plaintiff believes and continues to believe this is a strong case for certification, there is

1 risk and significant expense associated with class certification proceedings. As set forth above,
2 Defendant disputed liability and the anticipated class certification motion, arguing significant legal
3 uncertainties are associated with wage and hour cases, which can be factually complex and require
4 protracted litigation to resolve. Plaintiff alleges there were company-wide policies that affected the
5 employees uniformly, and which could be established using representative testimony and company
6 documents that would not require separate mini-trials on liability, but Defendant vigorously contested
7 liability and would have presented several significant defenses to the wage claims as well as to class
8 certification.

9 Finally, in class actions, decertification is always a possibility, and there is always a risk that a
10 trial of this magnitude can become unmanageable. A class trial would have also required expert
11 witnesses, the accrual of extensive litigation costs, and commitment of extensive further time and
12 financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that
13 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
14 further delay for the class members who have already waited years for the resolution in this matter.
15 Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of
16 compromise accounting for those risks and that uncertainty.

17 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

18 In light of the uncertainties and risks of certification and litigation, the parties agreed to a
19 compromise settlement of \$270,000.00. Class Counsel estimated \$1,873,991.60 in potential liability
20 exposure to Defendant for Plaintiff's main claims for damages and penalties, and the Gross Fund
21 Value of \$270,000.00 therefore represents a recovery for the Class members of approximately 14% of
22 the total estimated maximum liability exposure. (Garay Decl., ¶ 68) Under the Settlement, if the Court
23 approves all requested allocations and awards, the Net Fund Value is estimated to be \$125,000.00.
24 For the approximately 561 estimated Settlement Class Members, the average gross individual
25 settlement payment, using a straight average \$222.82. Any amounts not approved by the Court will
26 be added back to the Net Fund Value to be distributed to the Settlement Class Members who do not
27 opt out.

28 Plaintiff and Class counsel submit this is an excellent result and the Settlement is fair,

1 reasonable, and certainly advantageous to the Class. Each Settlement Class Member will be
2 compensated using a formula based on the total number of workweeks he/she held a non-exempt
3 position with Defendant during the Class Period. Basing the size of the award on Settlement Class
4 Member's work weeks during the Class Period ensures that those with more valuable potential claims
5 receive more money. All Settlement Class Members will enjoy the benefits under the same formula,
6 and none are singled out for special treatment, save for Plaintiff's requested representative
7 enhancement award.

8 **G. A Balance of Risk Factors and *Kullar* Analysis Support Approval**

9 In deciding whether to approve the settlement, the Court must balance these risk factors
10 against an "understanding of the amount in controversy and the realistic range of outcomes of the
11 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130, 133; *Munoz v. BCI*
12 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 408-09. The court "must stop
13 short of the detailed and thorough investigation that it would undertake if it were actually trying the
14 case . . ." *Id.* at 408. Plaintiff's counsel used the comprehensive data and documents provided to
15 perform an analysis of the potential liability exposure Defendant faced on Plaintiff's main class-wide
16 claims, establishing the realistic upper range of the outcome here.

17 The fact remains there was a very real prospect that nothing would be recovered if litigation
18 continued and class certification was ultimately denied. At the same time, further litigation would
19 require the expenditure of significant time and financial resources and there is always the possibility
20 of adverse developments in the law and the likelihood of extended battles in both the trial court and
21 the courts of appeal. Settlement is prudent compromise that benefits the Class Members promptly
22 and eliminates such concern.

23 **VI. THE NOTICE OF SETTLEMENT PROVIDES ADEQUATE NOTICE TO CLASS** 24 **MEMBERS**

25 To be deemed proper, a Notice must provide the class members with sufficient information to
26 make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*
27 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the class members of
28 the pendency of the action; reasonably convey information regarding the settlement and the class

1 members' rights, entitlements, and obligations; and afford class members the opportunity to present
2 their objections. *Id.* The Notice provides all the information a reasonable person would need to make
3 a fully informed decision about the settlement. It will notify all Class members of the terms of the
4 settlement, of its effect on their rights, of their options as Class members (i.e., participate, object, opt
5 out, and dispute work weeks), and of the consequences of and procedures for exercising those options.
6 The notice also directs Class members who have questions or concerns to contact the settlement
7 administrator or Class Counsel.

8 The standard for determining the adequacy of notice is whether it has a "reasonable chance of
9 reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal. App.
10 3d 960, 974. Here, the Notice will be sent via first-class mail to each of the Settlement Class Members
11 at their addresses from Defendant's records. If any Notice Packets are returned undeliverable without
12 a forwarding address, the Claims Administrator will use the national change of address database and
13 perform a skip trace to locate the Class members and mail a new Notice to the correct address. The
14 Class Notice should be approved as the best and most practicable way to ensure the greatest possible
15 number of Class members will receive notice.

16 **VII. CLASS REPRESENTATIVE ENHANCEMENT AWARD IS FAIR AND**
17 **REASONABLE**

18 "At the conclusion of a class action, the class representatives are eligible for a special payment
19 in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Plaintiff
20 requests a reasonable service award as an enhancement payment for his effort and initiative in bringing
21 and helping to prosecute this class action. Plaintiff has dedicated significant time and effort to these
22 proceedings. Plaintiff's courage in proceeding with his class-wide claims should not be
23 underestimated. By suing Defendant, Plaintiff contends he increased his risk of retaliation by
24 prospective employers, who must choose between an applicant who has never sued a prior employer
25 and one who has. Plaintiff contends this risk is particularly real in the information age, where
26 employers can perform background checks of prospective employees, sometimes with the stroke of a
27 key.

28 Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop

1 and prosecute this action at every stage of the litigation. Both before and after filing, Plaintiff
2 conferred with Class Counsel to discuss every aspect of this case. He provided Class Counsel with
3 information about Defendant and the industry, reviewed documents, identified witnesses, consulted
4 Class Counsel throughout the litigation, helped complete discovery, and participated in the mediation
5 process and reviewed and signed the settlement agreement after several conference with Class
6 Counsel.

7 Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge of
8 Defendant's practices. He has diligently, adequately, and fairly represented the Class members, and
9 has not placed his interests above any member of the putative Class. This sort of payment to a Class
10 representative has been a common feature of settlements negotiated by Class Counsel and has been
11 routinely approved by trial courts. The Class Representative Enhancement and Service Award in the
12 amount of \$10,000 to the Class Representative is fair and reasonable.

13 **VIII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE**

14 Class Counsel respectfully requests, without opposition from Defendant, an award of
15 attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Fund Value (i.e. up to
16 \$90,000.00), and for an award of reasonable costs and expenses in an amount not to exceed
17 \$20,000.00, subject to approval by the Court.

18 Class counsel submits it has the requisite experience, knowledge, and resources to serve as
19 Class counsel and to zealously represent the Class. Plaintiff's counsel has incurred substantial fees
20 and costs thus far in the litigation, including expert costs to analyze Defendant's data, and will provide
21 further details regarding hourly rates, lodestar, and hours, and will document expenses incurred, in
22 support of final approval and its fees and costs motion. It is anticipated that no lodestar multiplier,
23 will be required to award the requested fees of one-third of the common benefit created for the Class.

24 **IX. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

25 Certification is appropriate when the moving party has demonstrated the existence of an
26 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
27 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendant does not dispute, for
28 settlement purposes only, that all of the elements for class certification are met here. Defendant does

1 not concede that certification is appropriate outside of this Settlement and preserve all rights to oppose
2 certification if, for any reason, the settlement does not become effective.

3 **A. There is a Numerous and Ascertainable Class**

4 Whether a class is ascertainable is determined by examining the class definition, the size of the
5 class and the means available for identifying class members. *See Vasquez v. Superior Court* (1970) 4
6 Cal. 3d 800, 821-822; *Reyes v. Board of Supervisors of San Diego* (1987) 196 Cal. App. 3d 1263,
7 1271. Defendant's records established approximately 561 total Class members from the beginning of
8 the class period through mediation, and the class is anticipated to have grown proportionally through
9 the date of Preliminary Approval. Defendant does not dispute, for settlement purposes, that the
10 Settlement Class Members are ascertainable and sufficiently numerous.

11 **B. There is a Well-Defined Community of Interest**

12 A community of interest is established by predominant common issues of law and fact. *See*
13 *Vasquez*, 4 Cal. 3d at 811. It "does not depend upon an identical recovery, . . . The mere fact that
14 separate transactions are involved does not of itself preclude a finding of the requisite community of
15 interest so long as every member of the alleged class would not be required to litigate numerous and
16 substantial questions to determine his individual right to recover. . ." *Id.* at 809.

17 Plaintiff contends, and Defendant does not dispute for settlement purposes, that common issues
18 of fact and law predominate as to each of the claims alleged by Plaintiff. California courts show "no
19 hesitancy" in inferring class-wide causation, injury, and damages when a common course of action
20 has been shown. *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1350.
21 This inference "eliminates the need for each class member to provide individually the consequences
22 of the Defendant's actions to him or her." *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp.*
23 (1982) 131 Cal. App. 3d 741, 753).

24 This action involves, *inter alia*, a determination about Defendant's alleged failure to provide
25 meal and rest periods, failure to pay minimum and overtime wages, failure to reimburse for all
26 necessary business expenses, failure to provide accurate wage statements, the resulting failure to pay
27 final wages when required, and largely derivative claims under UCL and PAGA. Plaintiff contends
28 that these practices affected Class members in the same way and present questions that are suitable for

1 common adjudication because all Class members were subject to the same employment policies and
2 practices, which applied uniformly to all Class members. The outcome of litigation on this matter
3 depends upon questions that are common to Class members. While Defendant maintained otherwise,
4 these issues will not be decided on the basis of facts peculiar to each Class member, but rather on facts
5 common to them all, and liability can be determined on a class-wide basis.

6 **C. The Named Plaintiff's Claims are Typical**

7 A class representative's claims are typical when they arise from the same event, practice, or
8 course of conduct that gives rise to the claims of other putative class members, and if their claims rest
9 on the same legal theories. The class representative's claims must be "typical" but not necessarily
10 identical to the claims of other class members. It is sufficient that the representative is similarly
11 situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v.*
12 *Weller* (1983) 145 Cal. App. 3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191
13 Cal. App. 3d 1341, 1347 ("[I]t has never been the law in California that the class representative must
14 have identical interests with the class members."). Thus, it is not necessary that the class representative
15 should have personally incurred all of the damages suffered by each of the other class members.
16 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 228. Plaintiff contends, and Defendant
17 does not dispute for settlement purposes, that Plaintiff's claims are typical of class members' claims
18 because they arose from the same factual basis and are based on the same legal theories.

19 **D. Adequacy of Class Counsel and Class Representatives**

20 Class Counsel are experienced in class actions, have represented their clients zealously and
21 have no conflicts of interest. The Class Representative's interests are aligned with those of the Class
22 Members, he has suffered the same injuries, and has no conflicts of interest. Class Counsel and the
23 Class Representative are adequate.

24 **E. Predominance and Superiority**

25 Individual issues do not predominate over those common to the class, as addressed above.
26 Additionally, class proceedings are superior to individualized actions, as there is little interest or
27 incentive for Class members to individually control the prosecution of separate actions. If Class
28 members were forced to litigate their claims individually, it would result in hundreds of individual

1 actions against Defendant, and the cost of litigating each such case against Defendant would easily
2 exceed the value of any relief that could be obtained. Class proceedings are superior to individual
3 ones.

4 **X. CONCLUSION**

5 For all of the foregoing reasons, the parties respectfully request that the Court grant preliminary
6 approval of the Settlement Agreement, provisionally certify the proposed Class for settlement
7 purposes; approve Plaintiff as the Class Representative and his counsel as Class Counsel; approve the
8 proposed form of the Class Notice and plan for administration; and schedule the final settlement
9 approval hearing by entering the concurrently provided [Proposed] Order.

10 Dated: February 10, 2025

11 JOSE GARAY, APLC

12 

13 _____
14 Jose Garay
15 Attorneys for Plaintiff EDGAR LOPEZ